

### Remarks

Claims 1-34 are pending. Reconsideration is respectfully requested.

### Claim Status

Claims 1-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Harding, et al., U.S. Patent No. 6,651,188 ("Harding") in view of Watson, U.S. Patent No. 5,475,839. These rejections are respectfully traversed.

### REQUEST FOR WITHDRAWAL OF PREMATURE FINAL ACTION

The Final Action Dated October 8, 2008 agreed to withdraw the finality of the rejection presented in the Office Action dated July 31, 2008. Under such circumstances, the next Office is required to be Non-Final (MPEP §706.07(f) (III) (M)). Otherwise there would be no effective "withdrawal" of the premature finality of the rejection.

Because, the Office Action dated October 8, 2008 was made Final, Applicants again respectfully request the Office to withdrawal the finality of this Action and issue a Non-Final Action as is required under the rules.

Applicants respectfully submit that the Office is committing prejudicial error by depriving Applicants of their administrative due process rights (e.g., timely notice of the Examiner's position and opportunity for unhindered response thereto).

In order for the new 35 U.S.C. §103(a) rejections (e.g. over Harding in view of Watson) to be legally proper, they must first be applied in a Non-Final rejection. This situation has not yet occurred. As a result, Applicants have been denied their right to present further amendments (if

desired) and other procedural rights that are limited or denied when an Action is made Final prematurely (as is the present situation).

### **The Applicable Legal Standards for Obviousness**

In order to present a valid rejection based on obviousness, it is first necessary for the Office to make a *prima facie* showing of obviousness. *Prima facie* obviousness requires a showing that each of the recited features and relationships in the claims was known in the prior art. If the Office fails to establish a *prima facie* case of obviousness, the Applicant is under no obligation to submit evidence of nonobviousness. MPEP § 2142.

Even in cases where the Office has made a *prima facie* showing of obviousness, a rejection cannot be properly made unless there is a requisite showing that it would be obvious to one having ordinary skill in the art to combine the features and relationships to produce the invention as claimed. In accordance with the dictates of the United States Supreme Court in *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 82 USPQ 2d 1385 (2007) the determination as to whether there is a reason to combine features of prior art references must be evaluated through an analysis of the factors recited in *Graham v. John Deere*, 383 U.S.1, 148 USPQ 459 (1966). The factual inquiries that must be made under *Graham* include:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art;
- (d) evaluating evidence of secondary considerations.

Thus, in accordance with the requirements of *Graham*, it is mandatory that before a claim can be rejected on the basis of obviousness, the Office is required to make a factual

determination and resolve the level of ordinary skill in the pertinent art at the time that the invention was made. MPEP § 2141(2)(C). It is respectfully submitted that the Action does not meet these burdens.

**Absence of a Graham Analysis for Each Rejected Claim**

It is respectfully submitted that the Action does not include the required analysis and determinations under *Graham* with respect to each of the claims rejected under 35 U.S.C. § 103(a). The generic statements made in the Action regarding obviousness do not meet the requirements of *Graham*. Nowhere has the Office resolved the level of ordinary skill in the pertinent art.

In addition, in presenting rejections on the basis of obviousness, the Office is required to find a valid prior art reason why a person of ordinary skill in the pertinent art would combine the prior art elements in the manner recited in the claims. *KSR Int'l. Co. v. Teleflex, Inc.*, *supra*.

The Action fails to even attempt to provide such an articulated reason for each of the claims. For example, the generic reasons in the Action regarding obviousness such as "to offer an improved and more secure computer system" (Page 3, lines 14-15, et al.) do not articulate a reason why the particular combinations recited in each of the claims would in fact be obvious to one of ordinary skill in the art at the time of the invention. It is respectfully submitted that the Action fails to state a bona fide prior art reason why a person of ordinary skill in the art would combine the alleged prior art teachings in the manner recited in the claims. For at least these reasons, plus the failure to conduct a proper *Graham* analysis with regard to all the claims, it is respectfully submitted that the rejections under 35 U.S.C. § 103(a) are invalid and the rejections of all of the pending claims should be reversed.

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Conclusion

In conclusion, it was not known nor would it have been obvious to a person having ordinary skill in the art having full view of the cited references, to have produced the claimed features, relationships, and steps. Applicants respectfully submit that this application is in condition for allowance. The undersigned is willing to discuss any aspect of the application at the Office's convenience.

Respectfully submitted,



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Reg. No. 31,029